

Shelley S. Dempsey, Esq.
82 Deforest Road
Wilton, CT 06897

March 1, 2016

Testimony in Opposition to HB No. 5376 *An Act Concerning Affirmative Consent.*

Senator Bartolomeo, Representative Willis, Senator Witkos, Representative Betts, and members of the Higher Education and Employment Advancement Committee, thank you for the opportunity to testify concerning HB 5376.

My name is Shelley Dempsey and I am a constituent from Wilton. I am an attorney and the mother of a son who was falsely accused of sexual assault during his sophomore year in college. Additionally, I am a Board Member of Families Advocating for Campus Equality, which is known as "FACE", although I am not speaking on behalf of the organization today. I am speaking in opposition to HB 5376.

At the outset, let me underscore that I am not discounting the horror of actual sexual assault, harassment or partner violence on college campuses. These are crimes that should be investigated and prosecuted as the facts and law warrant.

However, there is another story that needs to be told involving the growing number of wrongful accusations of sexual misconduct on campus that ruin the lives of those falsely accused, as actual sexual assault ruins the lives of the victims.

Unfortunately, the language of HR 5376 will ensure that wrongful accusations will continue to occur, and the accused will be specifically deprived of the protections afforded them under the Constitution of the United States.

Activists would have you believe that false accusations are exceedingly rare; that accusers do not lie or recast a sexual experience as a rape or other form of sexual assault.

The evidence suggests otherwise.

A Son's Story:

On Labor Day weekend 2010, our son called to say he was accused of assault by a female hall mate and friend. He professed shock and disbelief, yet within hours of the call he was suspended from school, and advised that disciplinary and criminal charges were in the process of being filed against him.

None of the charges were true. None of the eyewitness, including the young woman's roommate, corroborated her version of events. Instead, the witnesses supported our son's version of events. The girl's story was created out of thin air. Her motive? To stay on a

varsity sports team. Had her coach known that she had broken every rule in the book on the evening before a big game, she could have been thrown off. Instead, she created a UVA-like story that she had been “attacked by a boy”, who happened to be our son.

The following three months were an expensive nightmare as our family fought the charges. Fortunately, we could pay for lawyers and forensic experts to counter the presumption of guilt and get to the truth. Without resources our son’s life would likely have taken a different path. However, justice prevailed. Our son convinced the university’s disciplinary panel that he was not responsible for the charges levied by the young woman, and on the strength of evidence admitted in that proceeding, the county District Attorney withdrew all charges. In another scenario, one that I have seen far too often, this experience could have destroyed our son’s life.

When this happened to our family we only knew of the infamous Duke Lacrosse case and thought that we were otherwise alone. We had no idea that there were other innocent young men like our son going through the same ordeal.

False or Unwarranted Accusations Do Occur

Why do young women file unwarranted charges? Based on my research, which involves conversations on a daily basis with families who have experienced the nightmare of false accusation, the reasons include:

- Regretted but consensual sexual encounters
- Embarrassment
- Foggy memories following use of alcohol or drugs
- Anger over a breakup
- Covering for sex outside of a relationship
- Attention or wanting to be a part of a movement
- Mental or emotional instability
- Lying to avoid punishment for unrelated personal conduct
- Anger at a professor or TA for a low grade or withheld honor

Yet in each of these cases, there was a presumption that the woman was sexually assaulted, and an equal presumption that the accused young man was guilty.

As a lawyer, it is clear that this view eviscerates due process and could potentially subject the accused to crippling sanctions that can be life altering, and in extreme cases, life ending.

Under the new and exceedingly broad definition of sexual assault mandated by the Department of Education Office of Civil Rights, “an unwanted contact of a sexual nature” is tantamount to rape. That includes such innocuous things as a hug, kiss, or one too many texts asking for a date.

Drinking is now recast as no excuse for the person initiating sex, but an absolute defense for the recipient. HR 5376 would codify this imbalance into law.

On college campuses, most sexual activity follows a night of drinking. In fact, many students will use alcohol explicitly to reduce inhibitions so that they can engage in the hookup culture.

Sober sex on campus is rare, although probably something that would reduce the frequency of sexual assault, the very thing this bill hopes to achieve.

As a Board Member of FACE I have a unique window on how many young people's lives – all men – that are being destroyed by unwarranted accusations. This is under current law. Imagine the additional burden placed on those falsely accused who must now “prove” affirmative consent, overcome the presumption of guilt, and fight against well-funded educational institutions who risk a loss of federal funding if action is not taken against the accused.

Our statistics should make you pause before voting for this legislation. These statistics are not readily available, and certainly not reported since they do not fit the narrative of those who want to brand college men as rapists.

I serve on FACE's Outreach Committee where we field calls from families of sons who have been wrongfully accused. FACE is a 501(c)3 organization formed in 2014 by mothers of falsely accused sons. The organization's mission is to lend support to families who are also facing the horror of a false accusation and to advise where they can turn for professional advice.

In its short history, FACE has been contacted by hundreds of families whose sons have been wrongfully accused. In 2016 alone we have been contacted by 43 families who are desperate, and whose sons are in the throes of false accusations.

These wrongfully accused young men suffer from the same conditions as victims of sexual assault including, anxiety, depression, PTSD, and thoughts of suicide. Many view their lives as over.

So you may hear that reporting of sexual assault is up due to affirmative consent policies, that more students are being expelled, and this is progress. But take a step back and think about your children or grandchildren.

- Do you want your male children and grandchildren to be viewed as potential rapists when they have consensual sex with another student on campus, who later recasts the night as an assault? Do you want hugs and casual kisses to be deemed “sexual assault”?
- Do you want them to be stripped of their constitutional right to due process when they step onto campus?

- Do you want them to be brought before campus Title IX investigators and tribunals that always side with the accuser?
- Do you want to forfeit thousands of tuition dollars if your student is falsely accused?
- Can you afford the legal and expert representation it may take to provide the tools needed to keep him from being expelled or sent to jail?

Students and Employees at Connecticut Colleges and Universities Deserve Better

The right to an education in CT, free from a hostile environment, should be equally available to all of our students. Clearly, women should not be fearful of rape or other forms of sexual assault. But young men should not be fearful of being expelled from their colleges for sexual activity that should never be recast as an assault.

As Americans we enjoy basic rights protected by the Constitution, including the:

- Right to competent counsel (provided if unaffordable)
- Right to a presumption of innocence
- Right to confront one's accuser
- Right to present evidence/witnesses and to cross-examine
- Right to remain silent where speaking could self incriminate

HR 5376 provides none of those protections to a student accused of sexual misconduct

HR 5376's Affirmative Consent standard undermines the right to a presumption of innocence and shifts the burden of proof to the accused student to somehow prove that a private sexual experience had an enthusiastic "YES" at every step of the way.

The accused are presumed guilty unless they can "prove" affirmative consent in "he said/she said" cases where generally there are no witnesses and no probative evidence.

HR 5376's Preponderance of the Evidence standard almost guarantees conviction of the accused since the current ideology is to "Always Believe the Victim" from the moment of accusation.

HR 5376 does not guarantee the right to and active participation of legal counsel for an accused student under investigation and during disciplinary proceedings, especially where the accused may need to remain silent or jeopardize parallel criminal court proceedings.

HR 5376 does not provide for cross-examination of witnesses including the accuser.

HR 5376 does not provide for an appeal process for the accused found responsible of sexual misconduct.

110 Lawsuits and Counting

The unjustly accused are suing colleges and universities over biased investigations and flawed disciplinary hearings. And they are winning. Courts are upholding breach of contract, Title IX, gender bias, and due process claims. Most recently, courts in California and Tennessee ruled that affirmative consent policies improperly shift the burden of proof to the accused. Colleges and universities have been ordered to pay damages, or have settled lawsuits, involving hundreds of thousands of dollars.

In the real world, statistics emerge. The large insurer United Educators studied 262 sexual assault claims paid between 2006 and 2010, which resulted in payments of \$36 million. Seventy-two percent of the payouts went to the accused males, young men who protested false accusation. With the 2011 “Dear Colleague” letter, the numbers have undoubtedly increased.

The passage of HR 5376 will guarantee more litigation against Connecticut colleges and universities.

HR 5376 is a Flawed and Potentially Dangerous Bill that Must be Opposed

Members of the Committee, this is a very complicated issue that affects all students and college employees in CT who should be treated fairly regardless of gender. Past injustices toward young women on campus should not be a license to swing the pendulum 180 degrees in the opposite direction to ensnare innocent young men. HR 5376 only replaces one group of victims with another. The committee can do better for all the people of Connecticut.

I ask that you table this bill and take the time to work across the aisle to craft legislation that truly protects all students and employees on our campuses. I look forward to working with you toward that end and welcome your questions.

Respectfully submitted,

Shelley S. Dempsey, Esq.